

CALIFORNIA COASTAL COMMISSION

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Filed:	October 23, 1998
Hearing Opened:	July 16, 1999
Staff:	Robert Merrill
Staff Report:	September 3, 1999
Hearing Date:	September 16, 1999
Commission Action:	

STAFF REPORT: APPEAL**DE NOVO ACTION ON APPEAL**

LOCAL GOVERNMENT:	County of Humboldt
DECISION:	Denial
APPEAL NO.:	A-1-HUM-98-88
APPLICANT:	CALIFORNIA DEPT. OF TRANSPORTATION DISTRICT 1
PROJECT LOCATION:	At the Mouth of the Mad River, just south of Clam Beach, adjacent to Highway 101, McKinleyville area of Humboldt County; APNs 511-351-01,05,07
PROJECT DESCRIPTION:	Construction of a rock slope protection revetment (Phase I), and placement of an additional 1,000 feet of rock slope protection (approximately 12,000 cubic yards of two-ton rocks) (Phase II) to protect Highway 101 and the coastal vista point from wave damage. The work was completed in March 1992 for Phase I and July 1995 for Phase II under the authorization of Emergency Coastal Development Permit Nos. CDP-42-912 and E-CDP-47- 94.
APPELLANTS:	CALIFORNIA DEPT. OF TRANSPORTATION DISTRICT 1

SUBSTANTIVE FILE
DOCUMENTS:

Coastal Development Permit Application No.
1-92-69; Humboldt County CDP Application #02-
95; and the Humboldt County LCP

SUMMARY OF STAFF RECOMMENDATION

The permit application seeks authorization to retain as a permanent development a revetment constructed along the bank of the mouth of the Mad River in 1992 and 1995. The major issue raised by the application is whether or not the revetment as constructed has caused an acceleration of erosion and bluff retreat upstream of the revetment. Property owners of bluff top parcels have produced geologic reports indicating that the revetment is directly responsible for the increased erosion they have been experiencing along their bluffs. Caltrans denies that the revetment has accelerated the rate of bluff erosion, pointing out that the estuary is a very dynamic system subject to a complicated array of natural forces that can affect the rate of erosion. Caltrans attributes the accelerated rate of erosion to the unusual river, current, and ocean conditions caused by El Nino. In response to the concerns raised over bluff erosion, Caltrans contracted with Professor Borgeld of Humboldt State University to study the effects of the revetment. Although Caltrans has provided Caltrans staff - prepared summations of the findings of the report, Caltrans has not released the actual reports themselves. The summations do not adequately respond to the specific points raised by the bluff top property owners' geologists. In the absence of adequate geologic information that adequately addresses these points, Staff believes the Commission cannot make the required findings under Section A315-16 of the Coastal Zoning Ordinance and Section 30235 of the Coastal Act, that the project will not contribute significantly to the erosion and destruction of the bluffs along the river. In addition, the application does not include an analysis of the impacts of the revetment on local sand supply, precluding the Commission from making required findings under Policy 3.28F of the McKinleyville Area Plan that the adverse impacts on shoreline sand supply of new shoreline protection devices have been eliminated or minimized by the project's design. Finally, the alternatives analysis submitted by the applicants does not address the full range of alternatives that may be available to protect Highway 101 and the vista point with the least amount of environmental damage. Therefore, staff recommends DENIAL of the application because based on the information currently available to the Commission, the project is inconsistent with LCP provisions regarding these issues.

STAFF NOTES:

1. Procedure.

At the Commission meeting of July 16, 1999, the Commission determined that a substantial issue existed with respect to the grounds on which the appeal had been filed, pursuant to Section 13115 of the California Code of Regulations. As the project as

denied by the County has been found to raise a Substantial Issue with respect to the policies of the LCP, the County's denial is no longer effective, and the Commission must consider the consistency of the project with the certified LCP de novo. A continued public hearing and vote on the project has been scheduled for the meeting of September 16, 1999. Testimony may be taken from all interested persons at the de novo hearing. The Commission may approve, approve with conditions, or deny the application.

2. Incorporation of Substantial Issue Findings.

The Commission hereby incorporates by reference the Substantial Issue Findings adopted at the July 16, 1999 hearing and contained in the staff report dated July 7, 1999.

3. Related Agenda Item.

At the September 16, 1999 meeting, the Commission will also conduct a hearing on related Coastal Development Permit Application No. 1-92-69. That application seeks authorization for the portions of the proposed project that are within the Commission's retained coastal development permit jurisdiction. The Commission may decide to hold a joint hearing on the two applications.

I. **MOTION, STAFF RECOMMENDATION DE NOVO, AND RESOLUTION:**

1. **Motion:**

I move that the Commission approve Coastal Development Permit No. A-1-DNC-97-019 subject to conditions.

2. **Staff Recommendation of Approval:**

Staff recommends a **NO** vote on the motion and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

3. **Resolution to Deny Permit:**

The Commission hereby **denies** a coastal development permit for the proposed project on the grounds that the project, located between the sea and the first public road nearest the shoreline, is not in conformance with the Del Norte County certified Local Coastal Program. Granting of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

IV. **FINDINGS AND DECLARATIONS.**

The Commission hereby finds and declares as follows:

A. **Incorporation of Findings by Reference.**

The Substantial Issue Findings for Commission Appeal A-1-HUM-98-88 are hereby incorporated by reference.

B. **Project and Site Description.**

The project site is bisected by the boundary between the Commission's retained permit jurisdiction and the coastal development permit jurisdiction of the County. The portion of the development within the County's jurisdiction is the subject of Coastal Commission Appeal No. A-1-HUM-98-088. The current application seeks permanent approval of the development authorized under Humboldt County Emergency Coastal Development Permit Nos. CDP-42-912 and E-CDP-47-94.

The entirety of Finding A of the Findings for Coastal Development Permit Application No. 1-92-69 is hereby incorporated by reference as the remainder of Finding B of this report. The text to be incorporated begins on page 4 of the first staff report contained in this document.

C. **Project History.**

The Humboldt County Planning Commission considered the proposed project during numerous Commission meetings between March 20, 1997 and September 17, 1998. On September 17, 1998, the Planning Commission denied the project. County staff had recommended approval, but the Planning Commission denied the project making the following motion for denial:

“Deny the project based upon the fact that sufficient evidence does not exist to make required finding #4: The proposed development and conditions under which it may be operated or maintained will not be detrimental to the public health, safety, or welfare.”

Based on an examination of the minutes of the Planning Commission's hearing when action was taken, the Planning Commission was concerned that the revetment may be causing increased erosion of the bluffs upstream of the project and did not have sufficient evidence from Caltrans or others that such erosion was not resulting from the Caltrans project. A suggestion was made by one Commissioner that “the permit be denied and have it resubmitted with real attention to the specific items the Commission has requested.” A copy of the Planning Commission minutes are attached in Exhibit 5.

The project was not appealed to the Board of Supervisors in a timely manner. An appeal of the denial was submitted by Caltrans a day after the appeal period closed and the County determined that the appeal could not be filed. The Board of Supervisors affirmed the decision to not accept the appeal at a Board meeting in March of 1999.

The County's Notice of Final Action on the permit was received by Commission staff on September 28, 1998 and became complete on October 8, 1998, the day the local appeal period closed (Exhibit No. 6).

On November 17, 1999, Commission staff received from Caltrans a signed waiver waiving Caltrans' right to a hearing within 49 days after the appeal was filed.

At the Commission meeting of July 16, 1999, the Commission opened the public hearing on the appeal and determined that a substantial issue existed with respect to the grounds on which the appeal had been filed, pursuant to Section 13115 of the California Code of Regulations. The Commission continued the public hearing on the de novo portion of the appeal to the September Commission meeting in Eureka. As the project as denied by the County has been found to raise a Substantial Issue with respect to the policies of the LCP, the County's denial is no longer effective, and the Commission must consider the consistency of the project with the certified LCP de novo.

D. Geologic Hazards

Section A315-16 of the Coastal Zoning Ordinance states:

"In addition to the required findings of Sections A315-14 through A315-15, as applicable, the Hearing Officer may approve.... an application for a use permit, coastal development permit....only if the following findings (can be made)

H. Public Safety Impact Findings

.....

(2) Coastal Geologic Hazard (CZ).

- (a) The development will be sited and designed to assure stability and structural integrity for the expected economic lifespan while minimizing alteration of natural landforms;
- (b) Development on bluffs and cliffs (including related storm runoff, foot traffic, site preparation, construction activity, irrigation, wastewater disposal and other activities and facilities accompanying such development) will not create or contribute significantly to problems of erosion or geologic instability on the site or on surrounding areas; and
- (c) Alteration of cliffs and bluff tops, faces, or bases by excavation or other means will be minimized. Cliff retaining walls shall be allowed only to stabilize slopes.

...

Section 30253 of the Coastal Act has been adopted as a policy of the McKinleyville Area Plan, the LUP segment covering the project site.

30253. New Development shall:

- 1) Minimize risks to life and property in areas of high geologic, flood and fire hazard.
- 2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding areas or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Property owners of bluff top parcels upstream of the revetment contend that the revetment Caltrans constructed has contributed significantly to the erosion of their properties. This contention raises serious concerns about the project's consistency with Section A315-16 of the Coastal Zoning Ordinance and Section 30235 of the Coastal Act, which, as noted above, has been adopted as a policy of the LUP.

The portion of Finding B (Geologic Hazards) of the Findings for Coastal Development Permit Application No. 1-92-69 beginning with the second full paragraph of the finding and continuing through the end of the finding is hereby incorporated by reference and inserted here as part of Finding D of this report. The text to be incorporated begins on page 6 of the first staff report contained in this document.

For the same reasons, the Commission finds that the project does not meet the requirements of Section A315-16(H)(2)(b) of the Coastal Zoning Ordinance which are virtually the same as the requirements of the applicable portion of Section 30235 of the Coastal Act.

E. **Required Findings for All Discretionary Permits.**

Section A315-14 of the Coastal Zoning Ordinance states:

Section A315-14. Required Findings for All Discretionary Permits. The Hearing Officer may approve or conditionally approve an application for a special permit, use permit, coastal development permit, or planned unit development permit only if all of the following findings, in addition to those findings that are applicable in Sections A315-15 through A315-18, inclusive, are made.

- A. The proposed development is in conformance with the County General Plan;
- B. The proposed development is consistent with the purposes of the existing zone in which the site is located, or when processed in conjunction with a zone reclassification, is consistent with the purposes of the proposed zone;

- C. The proposed development conforms with all applicable standards and requirements of these regulations; and
- D. The proposed development and conditions under which it may be operated or maintained will not be detrimental to the public health, safety, or welfare.

In the case where no findings are required by State Law, the above findings shall not be required.

As discussed in Finding D (Geologic Hazards) above, the geologic information provided by the upstream bluff top property owners indicates that the revetment has contributed significantly to the erosion and destruction of the bluffs along the river and threatens to undermine existing homes on the bluff. Without geotechnical information from the applicant that responds adequately to the specific points raised in the geotechnical information provided by the property owners' consulting geologists, the Commission cannot find that the project will not contribute significantly to the erosion and destruction of the bluffs along the river. As the revetment may be contributing significantly to the erosion and destruction of the bluffs along the river that is threatening to undermine bluff top homes, the Commission cannot make the finding that the proposed development and conditions under which it may be operated or maintained will not be detrimental to the public health, safety, or welfare as required by Section A315-14(D) of the Coastal Zoning Ordinance.

F. Shoreline Protective Devices.

Section A315-16 of the Coastal Zoning Ordinance states in applicable part, the following:

- ...
- (3) Coastal Shoreline Protection (CZ).
 - (1) The structure is the least environmentally damaging feasible alternative; and
 - (2) (If applicable), Beach nourishment and vegetative protection is not feasible.

Policy 3.28F of the McKinleyville Area Plan states:

New shoreline protection structures, including revetments, breakwaters, groins, seawalls, and other such construction, that alter natural shoreline processes may be permitted to protect existing principal structures or public facilities in areas subject to damage from wave action where relocation of the structures is not feasible and when:

- (1) It is least environmentally damaging feasible alternative.

- (2) Adverse impacts on shoreline sand supply have been eliminated or minimized by the project's design.
- (3) The project has been designed by a registered civil engineer with expertise in shoreline processes. Permanent shoreline structures shall be permitted only when based on a comprehensive study of areawide shoreline processes, which assesses long-term effects of the structures on sand transport, downdrift beaches, circulation patterns and flow rates, including effects such as erosion, shoaling, or reflection of wave energy on adjacent shorelines. It is the policy of the County to prefer beach nourishment and vegetative protection where feasible, to permanent structural shoreline stabilization. Temporary shoreline structures to protect individual lots may be permitted in emergencies provided that any temporary structure is removed upon construction of a permanent structure.
- (4) The County shall request the Department of Boating and Waterways to review plans for construction of shoreline protective structures. The Department may recommend measures to mitigate adverse effects on shoreline processes.
- (5) The County encourages study of shoreline erosion in McKinleyville to develop long term solutions to existing erosion hazards between School Road and Miller Road.

Sections A315-16 of the Coastal Zoning Code and Policy 3.28F of the McKinleyville Area Plan both require proposed new shoreline protection devices be the least environmentally damaging feasible alternative to be approved.

The portion of Finding D(c) (Fill in Coastal Waters and Wetlands, Alternatives) of the Findings for Coastal Development Permit Application No. 1-92-69 beginning with the second full paragraph of the finding and continuing through the next to last full paragraph of the finding is hereby incorporated by reference and inserted here as part of Finding F of this report. The text to be incorporated begins on page 15 of the first staff report contained in this document.

Given that the alternative of constructing a new revetment opposite the existing revetment in the desired configuration to trap and fix the mouth of the river should it migrate north again has not been evaluated, the Commission cannot make the required finding under Sections A315-16 of the Coastal Zoning Code and Policy 3.28F of the McKinleyville Area Plan that the project as proposed is the least environmentally damaging feasible alternative.

Policy 3.28F of the McKinleyville Area Plan requires that the adverse impacts on shoreline sand supply of new shoreline protection devices have been eliminated or minimized by the project's design.

The applicant was asked orally to provide information on the effects of the project on shoreline processes. However, none of the information provided to date provides an analysis of the impacts of the project on local sand supply.

Thus, there is no substantive evidence before the Commission that the proposed project is designed to eliminate or mitigate adverse impacts on local sand supply. Therefore, the Commission finds that the project does not meet the requirement of Policy 3.28F of the McKinleyville Area Plan with regard to impacts on sand supply.

Policy 3.28F(3) of the McKinleyville Area Plan states that permanent shoreline structures shall be permitted only when based on a comprehensive study of area-wide shoreline processes, which assesses long-term effects of the structures on sand transport, downdrift beaches, circulation patterns and flow rates, including effects such as erosion, shoaling, or reflection of wave energy on adjacent shorelines. As discussed above under Finding D, Geologic Hazards, and the paragraphs immediately above, the application lacks sufficient information to assess the long term effects of the structures on erosion and sand transport. With this information lacking, the project does not conform to the requirements of Policy 3.28F that a comprehensive study of area-wide shoreline processes be performed before a project is approved. Therefore, the Commission finds that the proposed project is inconsistent with Policy 3.28F(3).

EXHIBITS:

1. Regional Location Map
2. Vicinity Map
3. Phase I Site Plan
4. Phase II Site Plan
5. Historical Migration of River Mouth
6. Humboldt County Notice of Final Action
7. Mitigation Plan
8. Johnson Geologic Report
9. Busch Geologic Report
10. Caldrons Response to Erosion Concerns
11. Correspondence